**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**ARBITRATION PETITION 162 OF 2005**

National Food Products (I) Pvt.Ltd. ... Petitioners

v/s

Jet Airways (India) Ltd. ... Respondents

Mr E.P. Bharucha ib/ Ms Shilpa Kapil for Petitioners.

Mr P.K. Samdani for Respondents.

**CORAM : D.K.DESHMUKH J.**

**DATE : 2ND MAY 2005**

**P.C.:** -

1. The contract between the parties for supply of fruit juice by the petitioners to the respondents has been terminated by giving 90 days' notice. According to the petitioners, termination of the contract is not valid and as the termination of the contract is not valid, the negative covenant contained in the contract which prevents the respondents from purchasing fruit juice for passengers from anybody other than the petitioners continues to operate. In my opinion, even if it is assumed for the sake of argument that though there is specific clause in the contract which permits both the parities to terminate the contract without assigning any reason by giving 90 days' notice, the termination is not valid, then also a contract of such nature cannot be specifically enforced because the petitioners can be adequately compensated by awarding damages in terms of money. The learned counsel appearing for petitioners, relying on a judgment of the Supreme Court in the case of M/s Gujarat Bottling Co.Ltd. and others v/s Coca Cola Co. and others, reported in AIR 1995 SC 2372, submits that a negative covenant is of mandatory nature and therefore, an injunction for enforcing that negative covenant should

be granted. There can be no dispute on the proposition that normally negative covenant in a contract is mandatory and the Court can enforce it. In my opinion, in the present case, temporary injunction cannot be granted for enforcing negative covenant firstly because in the contract, there is a provision for termination of the contract by either party by giving 90 days' notice without assigning any reason. Therefore, it prima facie appears that the termination of the contract is valid. If the contract is validly terminated, the negative covenant will not survive. However, even if it is assumed that the contract continues and therefore the negative covenant continues, enforcement of the negative covenant at this time will mean that either the passengers travelling by the respondent Airline will have to travel without being served with any fruit juice or the respondents are to be forced to buy fruit juice from the petitioners. The net result would be the Court will be granting specific performance of the contract in favour of the petitioners. In my opinion, therefore, grant of temporary injunction in favour of the petitioners enforcing the negative covenant would not be in public interest. It is further to be seen here that though no reply has been filed, the learned counsel appearing for respondents stated before me that the reason for terminating the contract is that the respondents have lost faith in the petitioners. The

result of grant of temporary injunction in favour of the petitioners would mean that the respondents are forced to deal with the petitioners in whom the respondents do not have faith though it is quite clear that adequate compensation in terms of money is capable of remedying the breach of the contract alleged to have been made. In my opinion, the petitioners are not entitled to reliefs that are sought by this petition. Petition is disposed off. Ad-interim order granted earlier is vacated. At this stage, a request is made for continuing the ad-interim order. In my opinion, as I have found that no interim order can be made in favour of the petitioners as it would be against public interest, it would not be appropriate to grant the request. The request is rejected.

. Parties to act on the copy of this order duly authenticated by the Associate / Personal Secretary as true copy.

. Certified copy expedited.

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